Tekun Cemerlang Sdn Bhd v Vinci Construction Grands Projets Sdn Bhd

HIGH COURT (KOTA KINABALU) — ORIGINATING SUMMONS NO BKI-24–3 OF 1 OF 2021
WONG SIONG TUNG JC
31 MARCH 2021

Legal Profession — Practice of law — Unauthorised person — Defendant who had contract with Sabah-based plaintiff to build buildings in Sabah engaged Kuala Lumpur-based law firm ('GL') to file payment claim against plaintiff under Construction Industry Payment and Adjudication Act 2012 ('the CIPAA') — Sabah-based adjudicator was appointed to determine the claim — Plaintiff objected to GL acting for defendant in adjudication proceedings as GL's lawyers were not members of Sabah Bar and had no right to practise law in Sabah — Whether GL was 'unauthorised person' under s 15 of Sabah's Advocates Ordinance — Whether GL's issuance of payment claim, notice of adjudication and adjudication claim on behalf of defendant under CIPAA were nullities and of no effect — Whether adjudicator had no jurisdiction to determine defendant's claim — Whether allowing adjudication proceedings to continue was unreasonable, oppressive and sheer waste of time and money — Whether circumstances warranted stay of adjudication proceedings as a means of enforcing prohibition under Advocates Ordinance against GL from acting for defendant

The plaintiff, a Sabah-based company, had appointed the Kuala Lumpur-based defendant to carry out a construction contract in Sabah. Disputes arose over progress claims owing to the defendant under the contract. The defendant instructed its Kuala Lumpur-based solicitors ('GL') to demand payment of the total amount of progress claims due to it from the plaintiff. When the demand was not heeded, GL filed a notice of adjudication of the defendant's claim under the Construction Industry Payment and Adjudication Act 2012 ('the CIPAA'). In due course, the Asian International Arbitration Centre appointed a Sabah-based adjudicator to determine the dispute. The adjudicator accepted her appointment and gave the parties directions on the timelines to follow for service of the defendant's adjudication claim, the plaintiff's response thereto and the defendant's reply to the response. Pursuant to the said directions, GL served on the plaintiff the defendant's adjudication claim. On receiving the said claim, the plaintiff promptly filed the instant originating summons to stay the adjudication proceedings on the ground that GL was prohibited by the Sabah Advocates Ordinance ('the Ordinance') from acting as advocates for the defendant in the Sabah-based adjudication proceedings. The plaintiff contended that since none of GL's lawyers were members of the Sabah Bar, they had no right to practise law in Sabah in any manner and were considered

'unauthorised persons' under s 15 of the Ordinance. The plaintiff contended that all documents filed and served by GL in the adjudication proceedings were therefore nullities and the adjudicator consequently had no jurisdiction to entertain the defendant's claim.

Held, granting a stay of the adjudication proceedings:

(1) By acting for the defendant in the adjudication proceedings, GL were practising as advocates in Sabah and this was prohibited by the provisions of the Ordinance (see para 69).

(2) By preparing and submitting to the adjudicator the defendant's adjudication claim, GL expressly and clearly held themselves out as being the advocates for the defendant in the adjudication proceedings. GL therefore came within the definition of 'practise as an advocate or do any act as an advocate' under s 15(1) of the Ordinance and were prohibited from continuing to so act in the adjudication proceedings (see paras 50, 54 & 60).

(3) Section 8(3) of the CIPAA which allowed a party to the adjudication proceedings to appoint any other party to represent it in the proceedings did not give such a party the right to make such an appointment contrary to the law. Neither did s 16(2) of the Ordinance give GL a right to act as advocates for the defendant in the adjudication proceedings in abrogation of the rights conferred upon advocates under the Ordinance (see paras 63 & 65–66).

(4) Since the Ordinance prohibited GL from acting as advocatesfor the defendant in the adjudication proceedings, the payment claim, notice of adjudication and adjudication claim which GL issued under the CIPAA on behalf of the defendant were not valid. It amounted to no such payment claim, notice of adjudication and adjudication claim having been given by the defendant. As such, the adjudicator had no jurisdiction to determine the defendant's claim. It was unreasonable and oppressive and a sheer waste of time and costs to allow the adjudication proceedings to continue. The circumstances therefore warranted the granting of a stay of the adjudication proceedings to enforce the prohibition under the Ordinance against GL from continuing to act for the defendant as advocates in the adjudication proceedings (see paras 81–83 & 88–90).

[Bahasa Malaysia summary

Plaintif, sebuah syarikat yang berpangkalan di Sabah, telah melantik defendan yang berpangkalan di Kuala Lumpur untuk menjalankan kontrak pembinaan di Sabah. Pertikaian timbul mengenai tuntutan kemajuan yang yang harus dibayar kepada defendan di bawah kontrak. Defendan mengarahkan peguamnya yang berpangkalan di Kuala Lumpur ('GL') untuk menuntut pembayaran jumlah keseluruhan tuntutan kemajuan yang harus dibayar

kepadanya daripada plaintif. Apabila tuntutan tersebut diingkari, GL memfailkan notis adjudikasi atas tuntutan defendan di bawah Akta Pembayaran dan Adjudikasi Industri Pembinaan 2012 ('Akta'). Lanjutan itu, Pusat Timbang Tara Antarabangsa Asia melantik adjudikator yang berpangkalan di Sabah untuk menentukan pertikaian tersebut. Adjudikator menerima pelantikannya dan memberikan arahan kepada pihak-pihak pada garis masa untuk diikuti bagi penyampaian tuntutan adjudikasi defendan, jawapan plaintif dan balasan defendan terhadap jawapan tersebut. Berdasarkan arahan tersebut, GL menyerahkan kepada plaintif tuntutan adjudikasi defendan. Setelah menerima tuntutan tersebut, plaintif segera memfailkan saman pemula untuk menggantung prosiding adjudikasi dengan alasan GL dihalang oleh Ordinan Peguambela Sabah ('Ordinan tersebut') daripada bertindak sebagai peguambela defendan dalam prosiding adjudikasi yang berpangkalan di Sabah. Plaintif berpendapat bahawa oleh kerana tidak ada peguam GL yang merupakan ahli jawatankuasa Peguam Sabah, mereka tidak mempunyai hak untuk mengamalkan undang-undang di Sabah dengan cara apa pun dan dianggap sebagai 'orang yang tidak dibenarkan' di bawah s 15 Ordinan tersebut. Plaintif berpendapat bahawa kesemua dokumen yang difailkan dan disampaikan oleh GL dalam prosiding adjudikasi adalah terbatal dan adjudikator tidak mempunyai bidang kuasa untuk memenuhi tuntutan defendan.

Diputuskan, membenarkan penggantungan prosiding adjudikasi:

(1) Dengan bertindak bagi pihak defendan dalam prosiding adjudikasi, GL beramal sebagai peguambela di Sabah dan ini dihalang oleh peruntukan Ordinan tersebut (lihat perenggan 69).

(2) Dengan menyediakan dan mengemukakan kepada ajudikator tuntutan adjudikasi defendan, GL secara tersurat dan jelas memperkenalkan mereka sebagai peguambela defendan dalam prosiding adjudikasi. GL dengan itu berada dalam definisi 'beramal sebagai peguambela atau melakukan apa-apa tindakan sebagai peguambela' di bawah s 15(1) Ordinan tersebut dan dihalang daripada terus bertindak dalam prosiding adjudikasi tersebut (lihat perenggan 50, 54 & 60).

(3) Seksyen 8(3) Akta yang membenarkan pihak dalam prosiding adjudikasi untuk melantik pihak lain untuk mewakilinya dalam prosiding tersebut tidak memberikan hak kepada pihak tersebut untuk melakukan perlantikan tersebut bertentangan dengan undang-undang. Tidak juga s 1(2) Ordinan tersebut memberikan hak kepada GL untuk bertindak sebagai peguambela bagi defendan dalam prosiding adjudikasi dalam membatalkan hak yang diberikan kepada peguambela di bawah Ordinan tersebut (lihat perenggan 63 & 65–66).

(4) Oleh kerana Ordinan tersebut menghalang GL daripada bertindak sebagai peguambela bagi defendan dalam prosiding adjudikasi, tuntutan

pembayaran, notis adjudikasi dan tuntutan adjudikasi yang dikeluarkan GL di bawah Akta bagi pihak defendan adalah tidak sah. Ianya terjumlah kepada tiadanya sebarang tuntutan pembayaran, notis adjudikasi dan tuntutan adjudikasi yang telah dikemukakan oleh defendan. Oleh itu, adjudikasi tidak mempunyai bidang kuasa untuk menentukan tuntutan defendan. Ia adalah tidak munasabah dan menindas dan membuang masa dan kos semata-mata untuk membenarkan prosiding adjudikasi diteruskan. Oleh itu, keadaan tersebut membenarkan penggantungan prosiding adjudikasi untuk menguatkuasakan halangan di bawah Ordinan tersebut terhadap GL daripada terus bertindak bagi defendan sebagai peguambela dalam prosiding adjudikasi (lihat perenggan 81–83 & 88–90).]

Cases referred to

Allen v Aldridge 5 Beav 401; 49 ER 633 (refd)
Bar Malaysia v HF Vitality (Malaysia) Sdn Bhd [2003] 5 MLJ 145, HC (refd)
Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd [2010] 272 ALR 750, CA (refd)
Clifford (Deceased); Clifford v Clifford, In re [1932] NZLR 390, SC (refd)
Datuk Hi Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii [2009] 4 MLJ 165, FC (refd)
Datuk James Wong Kim Min, Re [1976] 2 MLJ 245, FC (refd)
Dorchester Hotel Ltd v Vivid Interiors Ltd [2009] EWHC 70 (refd)
Eastern Countries and London and Blackwall Railway Companies v Marriage (1860) 9 HLC 32; (1860) 11 ER 639, HL (refd)
Esdaile v Maclean (1846) 16 LJ Ex 71; (1846) 15 M & W 277; (1846) 153 ER 854 (refd)
Euroland & Development Sdn Bhd v Tack Yap Construction (M) Sdn Bhd [2018] MLJU 861; [2018] 1 LNS 1603, HC (refd)
Ideal City Development Sdn Bhd v PWC Bina Sdn Bhd and other appeals [2018] MLJU 1711, HC (refd)
In the Matter of Baker & Co [1903] 1 KB 189, CA (refd)
Irrawaddy Flotilla Co, Ltd v Bugwandass (1891) LR 18 (refd)
Liew Piang Voon v WLT Project Management Sdn Bhd [2020] MLJU 1431; [2020] 1 LNS 1105, HC (refd)
Majlis Peguam Malaysia v Euro Prestasi & Partners (M) Sdn Bhd [2015] MLJU 2055, HC (refd)
Mentmore Towers Ltd and others v Packman Lucas Ltd [2010] EWHC 457 (TCC) (refd)
Michael J Lonsdale (Electrical) Ltd v Bresco Electrical Services Ltd (in liquidation) and Twintec Ltd v Volkerfitzpatrick Ltd [2014] EWHC 10 (TCC) (refd)
Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd & anor [2018] 351 ALR 225, HC (refd)
R v Campbell & Anor (1974) 45 DLR (3d) 522 (refd)
R (Smith) v Mitchell [1932] OWN 508, CA (refd)

R Rama Chandran v The Industrial Court Of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)
R v Reid [1931] SSLR 62 (refd)
Samsuri bin Baharuddin & Ors v Mohamed Azahari bin Matiasin and another appeal [2017] 2 MLJ 141, FC (refd)
Sanderson, Re [1927] VLR 394 (refd)
Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd & anor [1988] 2 MLJ 280 (refd)
View Esteem Sdn Bhd v Bina Puri Holdings Bhd [2018] 2 MLJ 22, FC (refd)
Way v Bishop [1928] 1 Ch 647, Ch D (refd)
Zublin Muhibbah Joint Venture v Government of Malaysia [1990] 3 MLJ 125, HC (refd)

Legislation referred to

Advocates Ordinance (Cap 2) ss 6, 7, 8(1), (2), 9, 15, 16, 16(1), (1)(a), (1)(d), (1)(e), (1)(f), (1)(g), (1)(h), (2)
Construction Industry Payment and Adjudication Act 2012 ss 8, 8(3), 15, 16
Courts of Judicature Act 2012 ss 25, 35
Legal Professional Act [SG] ss 29(1), 30(1), 30(2)
Rules of Court 2012 O 59 r 7, Form 117

Roger Chin (Chin Lau Wong & Foo) for the plaintiff.
PK Lim (PK Lim & Co) for the defendant.

Wong Siong Tung JC:

INTRODUCTION

[1] The plaintiff is a company having its registered and business in Kota Kinabalu, Sabah and whereas, the defendant is a company having its registered office in Kuala Lumpur.

[2] Sometime in June 2019, the plaintiff and the defendant entered into a contract contained in various documents in writing whereby the plaintiff appointed and engaged the defendant to carry out the construction of a project works known as 'the proposed development of 27 units of Resort Villas (Phase 1A) on part of CL 045329048 at Pantai Dalit, Tuaran, Sabah' ('the said project works') for the sum of RM51,189,353.37.

[3] Towards the end of 2019, disputes arose between the parties relating to the progress claims made by the defendant under the contract.

[4] After the defendant through the firm of Messrs Gananathan Loh served payment claim for RM3,634,824.14 and failing any payment response served

by the plaintiff, the defendant initiated adjudication proceedings under the Construction Industry Payment and Adjudication Act 2012 ('the CIPAA') by a notice of adjudication issued by Messrs Gananathan Loh.

[5] In due course, the Director of Asian International Arbitration Centre (AIAC) (formerly known as Kuala Lumpur Regional Centre For Arbitration (KLRCA)) appointed Ms Catherine Chau Siew Ping of Messrs Catherine Chau & Associates in Kota Kinabalu, Sabah as the adjudicator under Reference No AIAC/D/ADJ-3479 of 2020.

[6] The said adjudicator gave her notice dated 17 December 2020 of her acceptance of the appointment to act as the adjudicator in the matter and also gave her Direction No 1 pertaining to the time for service of the defendant's adjudication claim, of the plaintiff's adjudication response and of the defendant's adjudication reply on the other party.

[7] Pursuant to the said directions as given, the defendant by Messrs Gananathan Loh served on the plaintiff an adjudication claim dated 5 January 2021.

THE APPLICATION OF THE APPLICANT

[8] On 8 January 2021, the applicant/plaintiff took out the originating summons herein (which was amended as ordered by the court on 13 January 2021 (ie, encl 9)) to stay the said adjudication proceedings under Reference No AIAC/D/ADJ-3479 of 2020.

[9] The grounds of the application are that the adjudication proceeding is a Sabah proceeding for which the solicitors/representatives, Messrs Gananathan Loh appointed by the defendant to act therein are not authorised persons under s 15 of the Advocates Ordinance (Sabah Cap 2), are non-members of the Sabah bar and that it is illegal and an offence for Messrs Gananathan Loh to represent the defendant in the adjudication proceedings.

SUBMISSION AND CONTENTIONS OF THE APPLICANT/PLAINTIFF

[10] The plaintiff's counsel submitted that under s 25 and/or s 35 of the Courts of Judicature Act 2012, the court has a discretion to grant or refuse a stay of the adjudication proceedings initiated by the defendant under the CIPAA.

[11] He submitted that the adjudication proceedings so initiated by the defendant is a Sabah proceeding.

[12] He contended that Sabah advocates have exclusive right to their legal practice in cases arising in Sabah 'in and outside' courts and that this is the constitutional right of Sabah Advocates. **A**

[13] The plaintiff's counsel submitted that Messrs Gananathan Loh are unauthorised persons under s 15 of the Advocates Ordinance (Sabah Cap 2) ('said Ordinance') as none of the advocates in the said firm appointed to represent the defendant in the adjudication proceedings is on the roll of Sabah Advocates and has a valid certificate to practice. **B**

C

[14] He submitted it is not only unconstitutional but also illegal for Messrs Gananathan Loh to commence an adjudication proceeding having regards to s 16(1)(a) and (1)(d) of the said Ordinance.

[15] He submitted that the court should not allow an unconstitutional and illegal act. He contended that these are the special circumstances for the court to order a stay of the adjudication proceeding initiated by the defendant by Messrs Gananathan Loh. **D**

SUBMISSION AND CONTENTIONS OF THE APPLICANT/PLAINTIFF **E**

[16] The defendant's counsel however submitted that there was no requirement and/or direction given by the adjudicator in this case to have the adjudication proceedings physically heard, for witnesses to be called and for site visits in Sabah to take place. **F**

[17] The defendant's counsel submitted that the exclusive right of Sabah advocates under Advocates Ordinance (Sabah Cap 2) is territorial. **G**

[18] He submitted that since Messrs Gananathan Loh as appointed by the defendant in the adjudication proceeding has not performed his task in Sabah, the advocates in the said firm appointed are not and cannot be 'unauthorized person' under the Advocates Ordinance (Sabah Cap 2). **H**

[19] The defendant's counsel submitted that as s 8(3) of the CIPAA confers rights to the parties to freely appoint any representation of its choice, therefore by virtue of s 16(2) of the Advocates Ordinance (Sabah Cap 2), s 16(1) therein has no application to Messrs Gananathan Loh appointed to act or represent the defendant in the adjudication proceeding. **I**

A RELEVANT LEGISLATION, ANALYSIS AND FINDINGS

[20] There is no dispute between the parties that the advocates in the firm of Messrs Gananathan Loh appointed to act or represent the defendant in the adjudicating proceedings are not advocates admitted and enrolled as advocates under the Advocates Ordinance (Sabah Cap 2).

[21] By s 8(1) of the Advocates Ordinance (Sabah Cap 2), persons admitted under s 6 and enrolled under s 7 as advocates thereunder have 'the exclusive right *to practise in Sabah* and *to appear and plead in the Federal Court or Court of Appeal* when sitting in Sabah or when sitting in any other part of Malaysia hearing a cause or matter originating from the High Court or any subordinate court in Sabah and *in the High Court and in all courts in Sabah subordinate thereto* in which advocates may appear, and as between themselves shall have the same rights and privileges without differentiation'. (Emphasis added.)

[22] This is subject to the provisos therein and exceptions as enumerated in s 8(2) which is not necessary for me to set out as they have no application to the case.

[23] The exclusive right under s 8(1) of the Advocates Ordinance (Sabah Cap 2) is in respect of practicing in the State of Sabah and appearing and pleading in the different levels of the court system.

[24] Section 15 of the Advocates Ordinance (Sabah Cap 2) provides that:

> 15(1) Subject to the provisions of this Ordinance, no person shall *practise as an advocate* or do any act *as an advocate* unless his name is on the roll and he has a valid certificate to practise authorizing him to do the act.
>
> (2) *For the purposes of this Ordinance, a person who does not fulfil the requirements in subsection (1) is referred to in this Ordinance as an 'unauthorized person'.* (Emphasis added.)

[25] The section prohibits any person practicing as an advocate or doing any act as advocate without being enrolled as an advocate and possessed a valid certificate to practise issued under s 9 therein. Such person so prohibited is defined as 'unauthorized person'.

[26] Then, s 16 of the Advocates Ordinance (Sabah Cap 2) specifies the acts or things done by an unauthorized person that would constitute offence and those would not.

> 16 Offences.
>
> (1) Any unauthorized person who —

(a) *acts as an advocate or agent for suitors,* or who as such advocate sues out any writ or process, or commences, carries on, solicits or defends any action, suit or other proceedings in the name of any other person or in his own name in any of the courts of Sabah, or draws or prepares any instrument relating to any proceedings in any of the courts of Sabah;

(b) wilfully and falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified *to act as, an advocate,* or that he is recognised by law as so qualified;

(c) either directly or indirectly for or in expectation of any fee, gain or reward, draws or prepares any instrument *relating to immovable or movable property;*

(d) appears before the Industrial Court, Arbitration Tribunal, Court Martial or the Disciplinary Board set up pursuant to this Ordinance *in a case or matter arising from Sabah;*

(e) either directly or indirectly for or in expectation of any fee, gain or reward, draws or prepares any instrument relating to immovable property and any memorandum or other documents for the purposes of registration under the Land Ordinance [Sabah Cap. 68] or any other written law relating to registration of documents or makes any application or lodges any document for registration under the said Land Ordinance or any other written law relating to registration of documents at the Central Land Office or at any District Land Office;

(f) on behalf of a claimant or person alleging himself to have a claim to a legal right, writes, publishes or *sends a letter or notice threatening legal proceedings other than a letter or notice that the matter will be handed to an advocate for legal proceedings;*

(g) takes instructions or draws or prepares any document for the purposes of applying for or opposing a grant of probate or letter of administration; or

(h) solicits the right to negotiate, or negotiates in any way for the settlement of, or settles any claim arising out of personal injury or death and founded upon a legal right or otherwise,

commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Nothing in section 8 or in subsection (1) of this section shall prevent any litigant in person or any person having a right to appear under any rules of court or any other written law *for the time being in force* from attending, pleading and doing any act with regard to any proceeding in which he is a litigant in person, *or in which he has a right to appear.*

(3) The provisions of this section shall not apply to —

(a) the Attorney-General of the Federation, any State Attorney-General, State Advocate-General or Legal Adviser of a State, or any person acting under the authority of any of them;

(b) any public officer drawing or preparing instruments in the course of his duty;

(c) any person employed merely to engross any instrument or proceeding,

(d) any person who draws or prepares for a fee or reward —

(i) a will or other testamentary instrument;

(ii) an agreement under hand only;

(iii) a letter or power of attorney;

(iv) a transfer of stock containing no trust or limitation thereof;

(e) any person who, on behalf of an illiterate —

(i) writes a petition or letter addressed to or intended to come to the notice of any public officer or Court; or

(ii) completes any document or form prescribed by any Ordinance;

(f) the Public Trustee, Official Assignee, Official Receiver, Assistant Public Trustees, Assistant Official Assignees and Assistant Official Receivers acting in the course of their duties under any law relating to their offices;

(g) any person acting personally for himself only in any matter or proceedings to which he is a party or acting solely for a company or organization which he serves as a full-time paid employee in any matter or proceedings in which the company or organization is a party, but such person shall have no right to represent the company or organization in Court or in Chambers or attest documents for the company or organization which is required to be attested by an advocate;

(h) any bona fide and full-time employee of an insurance company negotiating for the settlement of or settling a claim made or contemplated against any person or body corporate in cases where the claim arising out of personal injury or death relates to a risk insured by that insurance company;

(i) *an arbitrator or umpire lawfully acting under any written law relating to arbitration, settling or attempting to settle the dispute between the parties to the arbitration;*

(j) any full-time member of the academic staff of the Faculty of Law of the University of Malaya or other universities in Malaysia *acting solely in an advisory capacity upon instructions from a practising advocate;*

(k) any accountant drawing or preparing documents in the exercise of his profession;

(l) any agent duly authorized to the satisfaction of the Registrar of Trade Marks drawing or preparing documents in any matter relating to trade marks; and

(m) any full-time employee of an advocate drawing or preparing any document under the authority of a practising advocate and for the purposes of his employer.

[27] Section 2 of the Advocates Ordinance (Sabah Cap 2) defines 'to practise in Sabah' meaning to perform in Sabah the following:

(a) any of the functions which in England may be performed by a member of the Bar as such;

(b) any of the functions which in England may be performed by a Solicitor of the Supreme Court of Judicature as such; or

(c) any of the functions authorised under this Ordinance;

[28] In *Samsuri bin Baharuddin & Ors v Mohamed Azahari bin Matiasin and another appeal* [2017] 2 MLJ 141, the Federal Court held that the definition of the phrase 'to practise in Sabah' under s 2 of the Advocates Ordinance (Sabah Cap 2) which appears in the first limb of s 8(1), means to perform any of the functions that may be performed by the barristers and solicitors in England regardless of whether those functions are exclusive or non-exclusive.

[29] The Federal Court held that exclusivity or non-exclusivity is never part of the definition and exclusivity and functions are two separate issues. The Federal Court held that exclusivity does not in itself form part of the function to be performed.

[30] That being the case, the definition in s 2 of the Advocates Ordinance (Sabah Cap 2) only expounds the phrase 'to practise in Sabah' as those functions and acts that may be performed by the barristers and solicitors in England. It does not delimit or determine the exclusive right of advocates in those functions or acts as may be performed by advocates in their practice under the ordinance.

[31] Were Messrs Gananathan Loh engaged in practise as an advocate in Sabah or did any acts as advocates in Sabah by being appointed and representing the defendant in the adjudicating proceedings?

[32] What amounts to practise as an advocate or did any acts as advocate or nature of things or acts to be done to be in practise as advocate in Sabah can be inferred from the acts that were prohibited to be carried out by an unauthorised person as set out in s 16(1) of the Advocates Ordinance (Sabah Cap 2).

[33] I do not think the legislature intended the things or acts as set out in the s 16(1) of the Advocates Ordinance (Sabah Cap 2) to be exhaustive having regards to the definition it gave to 'practice in Sabah' under s 2 of the said Ordinance.

[34] The functions or things or works the barristers and solicitors in England in their practice they may carry out cannot remain static. Their functions or things or works carrying out in their practice change by the advancing time with the advent of new technologies, new inventions, methods of doing things, new legislations, requirements and methods of resolving disputes. So are the advocates carrying out their practice in Sabah and everywhere in the world.

[35] In *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd & anor* [1988] 2 MLJ 280, the issue is whether the foreign lawyers from an American law firm acting for the respondents in an arbitration proceeding between a respondent and applicant in Singapore amounted to 'practice as an advocate and solicitor or do any act as an advocate or solicitor' under s 29(1) of the Legal Professional Act in force in Singapore so as to be prohibited by s 30(1) thereunder.

[36] Similar to s 16(1) of the Advocates Ordinance (Sabah Cap 2), s 30(2) of the Legal Professional Act in question also provided a list of the acts and things that an unauthorised person was prohibited from carried out. Though the section did not specifically state that representing parties in arbitration proceedings is prohibited by an unauthorised person, the court in that case nevertheless held that the representation of the foreign lawyers for the respondent in the arbitration proceedings in Singapore amounted to 'practice as an advocate and solicitor or do any act as an advocate or solicitor' under s 29(1) of the Legal Professional Act and also 'acts as an advocates or a solicitor or agent for any party to proceedings' under s 30(1) of the said Act and would contravene the provisions.

[37] In that case, after referring to the cases of *Re Sanderson* [1927] VLR 394; *R v Reid* [1931] SSLR 62; *R (Smith) v Mitchell* [1932] OWN 508 and *R v Campbell & Anor* (1974) 45 DLR (3d) 522, Chan Sek Keong JC stated at p 284 that:

> On the basis of these decisions, counsel for the applicants submitted that whether a person is acting as an advocate or solicitor or doing an act as such *depends on the circumstances of each case. I agree.* It is neither necessary nor desirable to attempt to identify the acts and services which have the quality or character of being 'legal' acts or services or which may only be provided by advocates and solicitors. The character of a legal service is not determined solely by the requirement of knowledge of the law, for non-advocates and solicitors may have a knowledge of the law and many of them have a better knowledge. *The categories of legal services are not closed nor do they*

> *remain static for all time.* They change from time to time to meet the needs of society. New services are developed to meet the demands of political, economic and social changes in Singapore. Such changes also result in traditional legal services dying out as the need for them dies out. Some services are captured by other disciplines because their practitioners are better placed or equipped to provide them in Singapore. A good example is tax planning and advice which is predominantly provided by the accountancy profession. (Emphasis added.)

After considering the case of *In the Matter of Baker & Co* [1903] 1 KB 189 and *Allen v Aldridge* 5 Beav 401; 49 ER 633, His Lordship further held that:

> In my view, two tests may be constructed from these authorities and the provisions of sections 29 and 30 of the Act:
>
> (a) other than those specific acts listed in section 30(1) and (2), *an act is an act of an advocate and solicitor when it is customarily (whether by history or tradition) within his exclusive function to provide,* e.g. giving advice on legal rights and obligations, drafting contracts and pleadings and pleading in a court of law;
>
> (b) a person acts as an advocate and/or solicitor if, *by reason of his being an advocate and solicitor, he is employed to act as such in any matter connected with his profession.* (Emphasis added)

[38] In *Samsuri bin Baharuddin & Ors v Mohamed Azahari bin Matiasin and another appeal* [2017] 2 MLJ 141, the Federal Court upheld the ruling of the High Court that foreign lawyers who are not advocates within the meaning of the Advocates Ordinance (Sabah Cap 2) are prohibited by the same from representing parties to arbitration proceedings in Sabah.

[39] It is to be noted that the Federal Court decision was delivered on 19 January 2017, at a time when s 16(1) of the Advocates Ordinance (Sabah Cap 2) has yet to be amended by the Advocates Ordinance (Sabah) (Amendment) Act 2017. The said amending Act came in to force on 1 July 2017 (except s 23), PU(B) 294/2017) and inserted a provision specifically prohibiting an unauthorised person to appear before an arbitration tribunal as in the para (d). The said amending Act also inserted new paras (d), (e), (f), (g) and (h) under s 16(1) as they are in force at present.

[40] In that case the Federal Court nevertheless held that an unauthorised person was prohibited from representing parties in arbitration proceedings in Sabah notwithstanding that s 16(1) of the Advocates Ordinance (Sabah Cap 2) had no specific provision which at that time prohibited an unauthorised person for such representation in respect of arbitration proceedings.

[41] The Federal Court in so ruling, has not regarded the things or acts as set out in the s 16(1) of the Advocates Ordinance (Sabah Cap 2) then which an

A authorised person was prohibited to perform or only an authorised person may carry out to be exhaustive. In other words, the Federal Court has not regarded the categories of the legal service (acts or things to be done to constitute 'to practise or act as advocate') as closed and to remain static all the time.

B **[42]** This is consistent with the decision in *Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) Ltd & anor* [1988] 2 MLJ 280.

[43] I am mindful of the High Court decision in *Zublin Muhibbah Joint Venture v Government of Malaysia* [1990] 3 MLJ 125 which is directly in C contradiction to the decision in *Turner (East Asia) Pte. Ltd v Builders Federal (Hong Kong) Ltd & Anor* [1988] 2 MLJ 280.

[44] However, the Federal Court in *Samsuri bin Baharuddin & Ors v* D *Mohamed Azahari bin Matiasin and another appeal* [2017] 2 MLJ 141 (at para 26) has considered the decision in *Zublin Muhibbah Joint Venture v Government of Malaysia* [1990] 3 MLJ 125. The Federal Court has neither followed the decision in that case nor expressly approved it.

E **[45]** In *Way v Bishop* [1928] 1 Ch 647, the issue was whether a retired partner from a law firm was in breach of a restrictive covenant in a contract of partnership 'not to practise' as a solicitor for a period after retirement within a certain area, when he took up employment as a solicitor's managing clerk in the area concerned. It was held that by merely acting as a managing clerk to another F solicitor, the retired partner was not practicing as solicitor although he himself was a solicitor and in a position to practise as such.

[46] In that case, Lawrence LJ stated at p 658 that:

> G If a managing clerk holds a certificate which entitles him to practise, it may be difficult under certain circumstances to ascertain whether he is himself practising as a solicitor or not; *but I think the test in every case must be whether in the work he is doing the relation of solicitor and client is constituted between him and the client for whom he is acting.* Applying that test to the present case, the evidence shows that the defendant has not hitherto practised as a solicitor, and I do not find any evidence H that he threatens or intends so to practise in the future. He is now acting merely in the capacity of managing clerk to a practicing solicitor, and as such the legal work which he is doing is work done for and on behalf of his employer ... (Emphasis added.)

Russell LJ said at p 660 that:

> I In my opinion, the natural meaning of the words 'practising as a solicitor' is *acting as a solicitor in such circumstances as that the relation of solicitor and client will arise as between the covenanter and the persons whose affairs he is transacting.* In my opinion, *the phrase 'practising as a solicitor' connotes a person who is a principal; it connotes a person who has clients:* it connotes a person, in short, who has a practice, and the

words are not apt to describe the position of a person who is acting as the servant of another who is practising as a solicitor. (Emphasis added)

See also: *Bar Malaysia v HF Vitality (Malaysia) Sdn Bhd* [2003] 5 MLJ 145 and *Majlis Peguam Malaysia v Euro Prestasi & Partners (M) Sdn Bhd* [2015] MLJU 2055.

PRACTISE OR ACT AS ADVOCATES IN SABAH

[47] Considering the nature of claims of the defendant in the adjudication proceedings, apart involving the technical assessment of the construction works allegedly carried out and assessment of the value thereof requiring skills of the professions such as architects, engineers and quantity surveyors in the building construction, they also require legal knowledge and advice in respect of the application and effect of the provisions of the contract made between parties relating to the legal rights and obligations thereunder and also the knowledge and if not, advice on legal requirements under the provisions of the CIPAA which functions, advocates customarily and habitually were providing.

[48] The defendant admitted that it has through its solicitors, Messrs Gananathan Loh served the plaintiff in Kota Kinabalu, Sabah, on 20 October 2020, the required payment claim under CIPAA (see para 7 and exh 'JP2' of encl 13).

[49] The defendant has also by Messrs Gananathan Loh as its solicitors issued the required notice of adjudication under CIPAA and served it on the plaintiff on 17 November 2020 (see para 8 and exh 'JP3' of encl 13).

[50] By the adjudication claim (Form 7) dated 5 January 2021 (exh TCSB1 of encl 2) prepared and submitted by Messrs Gananathan Loh to the adjudicator, Messrs Gananathan Loh are expressly and clearly holding up themselves as the advocates representing the defendant in the adjudication proceedings.

[51] It signifies that Messrs Gananathan Loh have been acting as the advocates with the defendant as their client in the adjudication proceedings. It cannot be said that Messrs Gananathan Loh have been acting merely as servant of the defendant in the adjudication proceeding.

[52] It cannot be said that it is on the basis of a relationship with the defendant other than that of solicitors and clients that Messrs Gananathan Loh have been representing and acting on behalf of the defendant in the adjudication proceedings.

[53] It is not suggested that Messrs Gananathan Loh are not charging any fee or charges of any kinds for so acting.

[54] In the premises, I hold that Messrs Gananathan Loh are indeed practicing as advocates or have prepared and submitted the adjudication claim as advocates on behalf of the defendant in the adjudication proceedings within the definition of 'practise as an advocate or do any act as an advocate' under s 15(1) of the Advocates Ordinance (Cap 2).

[55] Have Messrs Gananathan Loh been practicing in Sabah by preparing and submitting the adjudication claim for the defendant to the adjudicator and by continuing to hold themselves as acting as advocates for the defendant in the adjudication proceedings?

[56] I am of the view that they have been practicing in Sabah in the adjudication proceedings for the purpose of Advocates Ordinance (Sabah Cap 2) even though the defendant's business office is in Kuala Lumpur and Messrs Gananathan Loh may have prepared the documentations for the adjudication proceedings in Kuala Lumpur.

[57] This is because all the elements necessary, if not substantially to be put forth to sustain the defendant's claims in the adjudication proceedings are in or occurred in Sabah. There is no dispute that the relevant contract between the plaintiff and defendant was made in Sabah. The project works under the contract between the parties which give rise to the claims of the defendant in the adjudication proceedings were and carried out in Sabah. The adjudicator appointed is in Sabah.

[58] The matters are plainly within the territorial jurisdiction of the High Court in Sabah and Sarawak with its branch in Kota Kinabalu Sabah.

[59] Any court proceedings as may necessary arise from the adjudication proceedings and any acts and decisions of the adjudicator appointed are properly within and subject to the jurisdiction of the courts in Sabah whether High Court or courts subordinate thereto.

[60] In the premises, Messrs Gananathan Loh, the firm of advocates and solicitors in Kuala Lumpur not being qualified under the Advocates Ordinance are prohibited to practise as advocates or do the acts as they have been as advocates in the adjudication proceedings under s 15(1) of the Advocates Ordinance (Sabah Cap 2).

[61] Further, Messrs Gananathan Loh also fall specifically under s 16(1)(a) of the Advocates Ordinance (Sabah Cap 2). I am of the view that the phrase 'in any of the courts of Sabah' in the said section does not qualify the earlier phrase 'acts as an advocate or agent for suitors' therein by applying 'the rule of last antecedent' in interpretation.

See: *Eastern Countries and London and Blackwall Railway Companies v Marriage* (1860) 9 HLC 32; (1860) 11 ER 639; at p 641;*Irrawaddy Flotilla Co, Ltd v Bugwandass* (1891) LR 18; Ind App 121 (PC); *Esdaile v Maclean* (1846) 16 LJ Ex 71; (1846) 15 M & W 277; (1846) 153 ER 854 and *In re Clifford (Deceased); Clifford v Clifford* [1932] NZLR 390.

[62] In my view, in so acting as they have been for the defendant in the adjudication proceedings, Messrs Gananathan Loh also fall specifically under s 16(1)(b) and 16(1)(c) of the Advocates Ordinance (Sabah Cap 2).

[63] In respect of the submission of the counsel for the defendant that as s 8(3) of CIPAA confers rights to the parties to freely appoint any representation of its choice in the adjudication proceedings, by virtue of s 16(2) of the Advocates Ordinance (Sabah Cap 2), s 16(1) has no application to appointment of Messrs Gananathan Loh to act or to represent the defendant in the adjudication proceedings, s 8 of the CIPAA is set out as follows:

> Initiation of adjudication
>
> (1) A claimant may initiate adjudication proceedings by serving a written notice of adjudication containing the nature and description of the dispute and the remedy sought together with any supporting document on the respondent.
>
> (2) Upon receipt by the respondent of the notice of adjudication, an adjudicator shall be appointed in the manner described in section 21.
>
> (3) *A party* to the adjudication proceedings *may* represent himself or be represented by any representative appointed by the party. (Emphasis added.)

[64] I do not think s 8(3) of the CIPAA gives a party to the adjudication proceedings a right to appoint whosoever for representation in the adjudication proceedings. It only gives a liberty for a party to choose between self-representation or to be represented by another in the adjudication proceedings.

[65] It does not give a party to the adjudication proceedings, a right to representation by another person which is prohibited by laws. It does not go that far.

[66] It certainly does not give Messrs Gananathan Loh the 'right' within the meaning in s 16(2) of the Advocates Ordinance (Sabah Cap 2) to represent and act as advocates for the defendant in the adjudication proceedings in Sabah in abrogation of the right as conferred upon the advocates under the Advocates Ordinance (Sabah Cap 2).

[67] Further, though the Advocates Ordinance (Sabah Cap 2) was declared Federal Law vide LN 199/65 or vide FLN 435/65, any Act of Parliament removing or altering the right to practise of advocates thereunder cannot came into operation until adopted by the State of Sabah by an enactment of its legislature. See: *Datuk Hi Mohammad Tufail bin Mahmud & Ors v Dato Ting Check Sii* [2009] 4 MLJ 165.

[68] I must make it clear that I am not holding that other professions in building construction such as the architects, engineers, quantity surveyors or any non-professionals who have the technical skills in the matters concerning building construction and also legal knowledge but 'unauthorized' under the Advocates Ordinance (Sabah Cap 2) must necessary be in practice as advocates or acted as advocates when they represent a party in adjudication proceedings and that the prohibitions in Advocates Ordinance (Sabah Cap 2) necessarily applied to them so representing a party in an adjudication proceedings. It is not an issue necessary for determination in this case.

[69] The issue in this case is solely whether Messrs Gananathan Loh by acting and representing the defendant in the adjudication proceedings have been in the practice as advocates in Sabah which is prohibited by the provisions of the Advocates Ordinance (Sabah Cap 2). I hold that they have been and are prohibited.

[70] Thus, no view is formed and no determination is made as to whether advocates under the Advocates Ordinance (Sabah Cap 2) have the right to represent or act for parties in adjudication proceedings to the exclusion of persons of other professions, such as architects, engineers, or quantity surveyors.

COURT JURISDICTION TO ORDER STAY

[71] The High Court being the superior court possesses supervisory jurisdiction over inferior tribunals such as adjudication tribunals under CIPAA so as to keep them within the bound of their authority and jurisdiction by prohibiting the progress of the adjudication proceedings. See *Halsbury's Laws of Malaysia — Administrative Law*, para 80.050 and 80.051; *R Rama Chandran v The Industrial Court Of Malaysia & Anor* [1997] 1 MLJ 145 and *Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd* [2010] 272 ALR 750. As to the scope of

judicial review of the decision of the adjudicator, see: *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd & anor* [2018] 351 ALR 225.

[72] Though ss 15 and 16 of the CIPAA provides for the setting aside and stay respectively of adjudication decision, there is no provision which ousts the supervisory role and jurisdiction of the High Court to intervene to set aside or to prohibit an adjudication proceeding by an order of stay or injunction on the ground that the adjudicator has no jurisdiction to enter upon the adjudication.

[73] In *View Esteem Sdn Bhd v Bina Puri Holdings Bhd* [2018] 2 MLJ 22, the Federal Court decided that a challenge to jurisdiction of an adjudicator appointed under CIPAA could be made at any time and not only upon an application to set aside an adjudication award under s 15 of CIPAA after conclusion of the adjudication proceedings (see *Dorchester Hotel Ltd v Vivid Interiors Ltd* [2009] EWHC 70; *Euroland & Development Sdn Bhd v Tack Yap Construction (M) Sdn Bhd* [2018] MLJU 861; [2018] 1 LNS 1603 and *Liew Piang Voon v WLT Project Management Sdn Bhd* [2020] MLJU 1431; [2020] 1 LNS 1105.

[74] What remains to be determined is whether this court should exercise it supervisory jurisdiction to intervene and to restrain the progress of the adjudication proceedings by granting a stay to enforce the prohibition of the representation of the defendant by Messrs Gananathan Loh.

[75] In *Euroland & Development Sdn Bhd v Tack Yap Construction (M) Sdn Bhd* [2018] MLJU 861; [2018] 1 LNS 1603, it was held that court would intervene in staying an adjudication proceeding when it could be established to be plain and obvious that the adjudicator lacked the jurisdiction (the core or original jurisdiction and not in the administrative or public law sense of making a wrong findings whether of law and facts which a tribunal is entrusted to make that would render the tribunal in excess of jurisdiction) or no jurisdiction at all to begin with or enter upon the adjudication due to non-compliance with the statutory requirements that conferred the jurisdiction.

[76] In that case, the court recognised that 'there are certain categories of clear cases of an absolute lack of jurisdiction where to allow the Claimant to proceed with the Statutory Adjudication would be a sheer waste of time only to have it later declared that that the whole Adjudication Proceeding and the Adjudication Decision is null and void for absolute lack of original or core jurisdiction'.

[77] In that case Justice Lee Swee Seng held that:

A [41] *Similarly in a case that warrants a stay of the adjudication proceeding on ground that based on the facts as disclosed on the payment claim or even taking into consideration the facts as disclosed in the adjudication claim if that has been served already, this court is not fettered from granting the declaration and injunction sought to stay the adjudication proceeding in a case that merits it, having in mind the intention of*
B *Parliament as expressed in s 27(3) of the CIPAA.*

[42] One can imagine a clear-cut case where the contract is one addressed in s 2 of the CIPAA where its application to is conferred and covered and under s 3 where its exemption and exclusion is spelt out. To insist on proceeding with adjudication on a contract that is clearly pure oral or a construction of a double-story residential
C bungalow house would be a sheer waste of time and money.

[43] In a case where there is no jurisdiction to begin with rather than one where there is jurisdiction but that the adjudicator has exceeded his jurisdiction, the court is perfectly positioned and has the power to allow a determination to be made first before the adjudication in a case that warrants it and even to allow an injunction to
D stay the adjudication proceeding.

[44] However Parliament's intention is clear in that there would be some jurisdictional challenges that may involve convoluted facts combined with no less complicated questions of law to consider. The intention of Parliament under s 27(3) of the CIPAA is clearly not to ruffle and trouble the adjudicator with such difficult
E questions of mixed fact and law where jurisdiction is concerned, but to allow him to proceed as if he has jurisdiction and to hear the parties on the dispute and to make his finding of facts on the dispute and determine if there is any sums owing for work done or services rendered as claimed, taking into consideration the defenses and set-offs and then without prejudice to the rights of the party unhappy with the issue
F of jurisdiction, to allow that dissatisfied party to raise the jurisdictional challenge in the High Court.

[45] This will obviate the need for the adjudicator to stop proceeding when he is in doubt and for party alleging a lack of jurisdiction to run to court each time a jurisdictional challenge even of the type where it is alleged that there is a total or
G absolute lack of core or original jurisdiction. There is no prejudice to the party alleging a lack of jurisdiction of the core or original jurisdiction type as that can always be raised any time and even after an adjudication decision has been given. (Emphasis added)

See also: *Liew Piang Voon v WLT Project Management Sdn Bhd* [2020] MLJU
H 1431; [2020] 1 LNS 1105 where it was held that the court would intervene in clear-cut cases where core jurisdiction is absent.

[78] In the instant case, based on the affidavit, it seems that the adjudicator has accepted and therefore permitted or at least prepared to let the adjudication
I proceedings to proceed and continue and to enter upon the adjudication with the defendant's representation by Messrs Gananathan Loh acting as the defendant's solicitors thus permitting them to practise as advocates in the adjudication proceedings before her in Sabah (see paras 12–15 and exhs 'JP7', 'JP8', 'JP9', 'JP10' and 'JP11' of encl 13 and exh TCSB1 of encl 2).

[79] This is prohibited by the provisions of the Advocates Ordinance (Sabah Cap 2) for the reasons I have given. A

[80] The objection of the plaintiff goes to the jurisdiction of the adjudicator to enter upon and to determine the claims by an agent on behalf of his principal which the agent is prohibited to represent or act by law. B

[81] In my judgment, the payment claim, notice of adjudication and adjudication claim as required by CIPAA cannot be validly given on behalf of the defendant by the representation of Messrs Gananathan Loh in practise as defendant's advocates prohibited by the Advocates Ordinance (Sabah Cap 2). It amounts to no such payment claim, notice of adjudication and adjudication claim ever given by the defendant. C

[82] That being the case, the adjudicator can have no jurisdiction to enter upon the adjudication of the matters and determine the claim. See *Ideal City Development Sdn Bhd v PWC Bina Sdn Bhd and other appeals* [2018] MLJU 1711; *Michael J Lonsdale (Electrical) Ltd v Bresco Electrical Services Ltd (in liquidation) and Twintec Ltd v Volkerfitzpatrick Ltd* [2014] EWHC 10 (TCC). D

E

[83] Any decision thus by the adjudicator would not be capable of enforcement and to require the plaintiff to contest the claims in such adjudication proceedings would be sheer of waste of time and costs.

[84] In interesting to note that in *Mentmore Towers Ltd and others v Packman Lucas Ltd* [2010] EWHC 457 (TCC), Edwards Stuart J held that: F

> [22] My conclusion is that *there is no difference in principle between the approach to be adopted by the court when considering whether or not to order a claim brought by way of litigation to be stayed on the grounds that it is being brought unreasonably and oppressively, and the approach to be adopted when considering whether or not to restrain the further pursuit of an identical claim by way of adjudication on the same grounds.* However, the application of those principles may differ according to the circumstances. It does not follow that because a court would order the stay of a particular claim brought by way of litigation, that it would automatically restrain the pursuit of the same claim by way of adjudication. G H

[85] This suggests that adjudication proceedings may be stayed on the grounds that they are brought unreasonably and oppressively.

[86] Further, though the Advocates Ordinance (Sabah Cap 2) was declared federal laws and the effect of which was to transfer the responsibility of administering the federal laws to the federal authority and to vest on the federal Parliament the power to amend or repeal such laws subject to the provisions of the Federal Constitution, it remains peculiar to the State of Sabah and effective I

in Sabah only. See: *Re Datuk James Wong Kim Min* [1976] 2 MLJ 245.

[87] That means that the prohibition under the Advocates Ordinance (Sabah Cap 2) against Messrs Gananathan Loh for practicing as advocates in Sabah by their representation for the defendant in the adjudication proceedings in Sabah could not be enforced against them so long as they remained outside the state territory of Sabah.

[88] It can be said to be unreasonable and oppressive to let the adjudicating proceedings to proceed in the circumstances.

[89] It seems to me that the only effective way in the circumstances of the case to enforce the prohibition under the Advocates Ordinance (Sabah Cap 2) against Messrs Gananathan Loh for practicing as advocates in Sabah by their representation for the defendant in the adjudication proceedings in Sabah is to stay such adjudication proceedings.

[90] In the premises, the circumstances in the case warrant the intervention by this court to grant a stay of the adjudication proceedings to enforce the prohibition under the Advocates Ordinance (Sabah Cap 2) against unauthorized persons to practise or to act as advocates in Sabah by representation for a party in the adjudication proceedings in Sabah.

PRONOUNCEMENT AND ORDERS

[91] I therefore order that the adjudication proceedings under Reference No AIAC/D/ADJ-3479 of 2020 be stayed.

[92] I will hear submissions of the parties on costs on 15 April 2021 for which I direct the parties to file and serve their written submissions thereto on or before 15 April 2021. I also direct the plaintiff's counsel to file the bill of costs in Form 117 under O 59 r 7 of the Rules of Court 2012 for the court to consider the reasonable costs to be awarded if the court should decide that the plaintiff should be awarded the costs of this action.

Order accordingly.

Reported by Ashok Kumar